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The Withdrawal of the Initial Complaint and the Settlement by the Parties, Expressions of Christian Forgiveness

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Abstract

For offences that harm private interest or have a limited social impact, the Criminal Code of 1969 provided the withdrawal of the initial complaint and the settlement by the parties.

The draft of the Romanian Criminal Code, submitted for approval to Parliament, tacitly repeals the institution of the settlement of parties, which, as the founder of Romanian criminal law argued, “may be more useful for restoring legal order and prevent other disturbances that may have stemmed from the lingering resentments of the two subjects of the litigation.”

In most modern criminal laws we can no longer find the explicit settlement by parties, but rather the presumed settlement inferred from the withdrawal or abandonment of the criminal complaint. In Romanian criminal law, over time, offences for which settlement was possible have varied from one era to another. In the Sturdza Codex, settlement was possible and considered as mitigating. In the proposed Criminal Code bill of 2004, settlement by the parties also existed.

The will to reach a settlement by the parties may be determined by Christian reasons. Forgiveness of one's fellow man is a commandment of the Lord Christ, which He himself fulfilled on the cross and preached.

What is the contribution of Christian teaching to the emergence, development and application of the criminal law institutions of withdrawal of initial complaint and settlement by parties?

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When analyzing the criminal and criminal trial institutions to see whether they protect Christian values, I considered it fitting to examine whether and/or in what way Christian forgiveness has left its mark on the

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emergence, change and application of the withdrawal of the initial complaint and settlement by the parties.

The institution of settlement between the parties was eliminated from the draft law on the Criminal Code, the version submitted to the Romanian Parliament.

Subsequently, the decision was reviewed and settlement was regulated as cause of removal of criminal liability. The institution of the settlement by parties existed in the Criminal Code draft of 2004.

The founder of Romanian criminal law, Vintilă Dongoroz, argued that “settlement by the parties may be more useful for restoring legal order and prevent other disturbances that may have stemmed from the lingering resentments of the two subjects of the litigation” (Dongoroz, V. 1939, p.p. 723- 724). Nonetheless, studies in comparative criminal law conclude that in most modern criminal codes there is no explicit settlement by the parties, but rather the presumed settlement inferred from the withdrawal or abandonment of the criminal complaint.

When does the history of humanity record the birth of the legal institutions that I examine? Did the withdrawal of the criminal complaint emerge as a manifestation of Christian forgiveness? It appears that “in Roman law, “abolitio privata” could lead to the withdrawal of an allegation” (Dongoroz, V., 1939, p. 725).

Is settlement by the parties a legal institution which emerged as a result of the teaching of the Saviour Jesus Christ? I would have wanted with all my heart to confirm this assumption, however this institution already existed in Roman law. Regarding this institution, it was noted that “the victim’s entitlement to a poena” (the poena was the monetary equivalent of forgiveness by the victim. Its payment extinguished the victim’s retaliation rights) “was extinguished through reconciliation (pactum). Reconciliation, “pacere”, which the Law of the Twelve Tables mentions, we must interpret, in agreement with the ideas of that era, as the basic forgiveness which restores tranquillity among litigating groups (or individuals).” (Jakotă, M., 2002, p. 430) In other words, the right to vindication that stemmed from a criminal act was extinguished either by payment by the perpetrator of the offence of an amount of money to the victim or by reconciliation of the parties. Prior to the monetary compensation of the fault in cases when forgiveness did not arise, the aggrieved party was entitled to private retaliation. In the law of the Hebrew people, such vengeance was regulated by the law of the talion, which stipulated that “But if there is serious injury, you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn...” Over time, this practice was replaced by a monetary damages paid for any harm caused by the perpetrated acts.

The Saviour Christ came not with the harsh law of vengeance, but rather with the law of law and forgiveness. Consequently, He declared “You have heard that it was said, ‘Eye for eye, and tooth for tooth.’ But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also. And if anyone wants to sue you and take your shirt, hand over your coat as well. If anyone forces you to go one mile, go with them two miles. Give to the one who asks you, and do not turn away from the one who wants to borrow from you. “You have heard that it was said, ‘Love your neighbour and hate your enemy.’ But I tell you, love your enemies and pray for those who persecute you”. (Matthew 5: 38-44)

1. Christian forgiveness

Faithful to its founder, Christianity attaches great importance to forgiveness, both the forgiveness granted by the divinity and the one offered by people to one another. Accordingly, whoever does not forgive the one who did wrong by him is not entitled to being in communion, i.e. he cannot share in the grace of the Holy Sacraments and cannot participate in acts of worship. The reason behind this treatment lies in the life example and teaching of Christ the Lord. Although unfairly sentenced, viciously beaten and crucified on the Cross, He had the power to declare: “Father, forgive them, for they do not know what they are doing!” (Luke 23: 34), thereby providing the supreme paradigm of forgiveness. Moreover, after His Resurrection, the Lord Christ did not seek vengeance against those who caused him suffering, but rather his first words were “peace unto all”! We thus understand that there is no act that cannot be forgiven. To the question of often we must forgive, the answer we are given is „not seven times, but seventy-seven times” (Matthew 18: 22). The number seven in Judaic kabala represented completeness, perfection. Therefore, forgiving seventy times seven means forgiving perfectly and completely. Nonetheless, the Saviour warns that “And so I tell you, every kind of sin and slander can be forgiven, but blasphemy against the Spirit will not be forgiven. 32 Anyone who speaks a word against the Son of Man will be forgiven, but anyone who speaks against the Holy Spirit will not be forgiven, either in this age or in the age to come.” (Matthew 12: 31-32) By the words in the

Lord's Prayer, "And forgive us our debts, as we also have forgiven our debtors" (Matthew 6: 12), He teaches us that the forgiveness by the heavenly Father can be achieved if we forgive all who wronged us. Furthermore, those who seek to preserve communion must reconcile with everyone. In this respect, in the Sermon on the Mount, He stated "Therefore, if you are offering your gift at the altar and there remember that your brother or sister has something against you, leave your gift there in front of the altar. First go and be reconciled to them; then come and offer your gift." (Matthew 5: 23-24). This text shows that sacrifices for the sake of the forgiveness of sins that people make to God are not accepted as long as those who make them feel that someone is not reconciled with them. Following this evangelical advice, traditionally the faithful when coming to Church ask for forgiveness from one another and afterwards offer their sacrifice on the Holy Altar (Bible or Scripture, 1988).

Also a consequence of Christ's personal example and the exhortations to forgiveness for those who are to take communion there is the following advice "If thou wishest, O man, to eat the Body of the Lord, approach in fear, lest thou be scorched for it is fire, and, drinking the divine Blood unto communion, first reconcile thyself to them that have sorrowed thee, Then venture and eat the mystical food" (Ceașlov [Horologion]).

For prayer to be granted by the Lord, it must be done in peace with all people: "whatever you ask for in prayer, believe that you have received it, and it will be yours. And when you stand praying, if you hold anything against anyone, forgive them, so that your Father in heaven may forgive you your sins" (Mark 11: 25-26)

The Lord Christ urges those who have erred to seek forgiveness from those who they wronged as soon as possible: "Settle matters quickly with your adversary who is taking you to court. Do it while you are still together on the way, or your adversary may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison." (Matthew 5: 25)

As a consequence of the Lord Christ's advice, forgiveness for the one who did wrong and reconciliation with the person that was wronged are goals of the life of Christians.

The first collections of laws in the Romanian lands were known as "pravila". They had a religious and official nature, "being drafted on the order of the ruler or the metropolitan bishop and underwritten by them. Provisions in the pravila applied both to the clergy and the lay people, in the religious field per se and in the legal field. Indeed, according to the view of the authors of Church pravila, regulations of civil, criminal or criminal trial law were still part of the religious field." (Floca, 1939, p.219).

The Church and, under its influence, the state attempted to resolve litigation by means of peaceful reconciliation of the two parties, disregarding the severity of the offences. If the victim did not consent to marriage, the guilt was atoned by payment of an amount of money which would serve as an attractive dowry for the victim. There was no concept of protection of public interests which nowadays generates in criminal law the impossibility for the parties to reconcile for acts with a high level of social danger.

2. Initial complaint and its withdrawal in the old and new Criminal Code

Committing an offence stipulated in criminal law determines the liability of the offender. There are cases when, although the criminal offence was perpetrated, for certain reasons determined by law, criminal liability is eliminated. Some of these are based on forgiveness. Such cases include amnesty, pardon, absence of initial complaint and settlement by the parties. Amnesty and pardon are causes that the state authorities can use without considering the wish of the aggrieved party.

The absence of the initial complaint can stem from negligence, lack of knowledge or forgiveness.

The withdrawal of the initial complaint and the settlement (by the parties) is a voluntary and conscious step by the aggrieved party in the sense of abandoning the claim to have the perpetrator punished and recover damages.

A first novelty is that the new Criminal Code contains two articles instead of one on the issue. As such, whereas in the old Code, article 131 (article 131 *Law No. 15* of June 21, 1968 Criminal Code of Romania) entitled "Absence of initial complaint" includes the institution of initial complaint, in the new Code the two institutions are dealt with in separate articles, i.e. 157 and 158. (article 157 and article 158 *Law No. 286/2009*, Criminal Code of Romania)

Another novel element is that certain special situations are regulated, namely the cases when the party is deceased or when the legal person was liquidated before the deadline provided by the law for filing a complaint, a case when criminal proceedings can begin ex officio.

Another new element refers to the deadline by which a complaint may be withdrawn, namely before the court makes a final decision. Furthermore, in contrast to the provisions in the old Criminal Code, in cases where there are several active perpetrators of an offence, if a complaint targeting one of them is withdrawn, then his liability is eliminated, therefore active joint liability is eliminated too.

Another novelty is that the initial complaint can be withdrawn by legal representatives or with the consent of persons appointed by law in the case of persons that are unable to exercise their rights or are capable to exercise them only in limited manner.

The new regulation gives the prosecutor the right to intervene between the aggrieved party and the suspect if the prosecutor initiated the criminal proceedings. As a result, the withdrawal of the criminal complaint is not effective as long as it is not endorsed by the prosecutor. In the old regulation, the prosecutor was granted the right to initiate criminal proceedings *ex officio* in cases when the aggrieved party was a person unable to exercise their rights or only capable to exercise them in limited manner. The new regulation provides for better protection of the right of vulnerable persons to demand that offenders are punished.

In the old Code governing criminal proceedings, the deadline by which the initial complaint had to be filed was 2 months, calculated as from the day on which the aggrieved party knew who the offender was (article 284 *Law No. 29 of November 12, 1968, Criminal Procedure Code*), while the new Code governing criminal proceedings states that the complaint must be filed within 3 months from the day on which the aggrieved party became aware of the offence (article 296 *Law No. 135/2010, Criminal Procedure Code*).

3. Settlement (by the parties) in the old and new Criminal Code

The title of article 159 in the new Code is “Settlement” (article 159 *Law No. 286/2009, Criminal Code of Romania*) in contrast to the title of article 132 in the old Code, which was “Settlement by the parties” (article 132 *Law No. 15 of June 21, 1968 Criminal Code of Romania*). The reason for this is that in the new Code governing criminal proceedings, at article 79 (article 79 *Law No. 135/2010, Criminal Procedure Code*), the person that was the victim of physical, financial or moral injury is called aggrieved party and is no longer a party in the trial in contrast to the aggrieved party that was party in the trial as designated by article 75 of the old Code of criminal proceedings (article 75 *Law No. 29 of November 12, 1968, Criminal Procedure Code*).

In the new regulation, the withdrawal of the complaint and the settlement of the parties are never incident for the same offences. The withdrawal of the complaint is governed by the principle of availability, which assumes the willingness of the aggrieved party, whereas settlement is governed by the principle of official action, which assumes that criminal proceedings are initiated *ex officio*. Therefore, the aggrieved party may have the opportunity to forgive even when the state considers that it must protect certain values by initiating criminal proceedings *ex officio*.

Another different aspect is that settlement in the old regulation could occur up to the moment the final decision was issued, whereas in the new regulation settlement can be reached only before the criminal court issues the statement taking notice of the offence.

Paragraphs 5 and 6 of article 159 (article 159 *Law No. 286/2009, Criminal Code of Romania*) contain two new regulations in the area of settlement for legal entities. In such cases, settlement is concluded through the legal or appointed representative and is effective only between the parties to the settlement.

4. Offences for which withdrawal of the complaint and settlement are possible

In Romanian criminal law, over time, offences for which settlement was possible have varied from one era to another. Furthermore, settlement did not always result in eliminating criminal liability. For example, in the Sturdza Codex, settlement was possible and considered as mitigating (Dongoroz, V., 1939, p. 725).

By decree no. 132/1957, reconciliation commissions were established in Romania, over a period of 11 years, which sometimes included priests, which increased the chances of settlement by the parties (article II.1. Decree no. 132/1957). Nowadays, reconciliation can be done, without being compulsory, by means of penal mediation (article 23 *Law No. 135/2010, Criminal Procedure Code*). If a mediation agreement is reached in case of offences for which an initial complaint can trigger criminal proceedings or for which settlement is possible, the mediation agreement

prevents the commencement or continuation of the criminal trial, producing effects both in the criminal and the civil action.

5. Conclusions

Although the two examined institutions did not emerge as a result of the Christian teaching on forgiveness, nevertheless their preservation in criminal law and the increase in the number of offences for which the withdrawal of the complaint or settlement are possible is also a consequence of Christian theology. Moreover, it is certain that the number of trials which were closed through the use of such clauses aimed at removing criminal liability has increased under the influence of Christian precepts on forgiveness.

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